

Oregon State Bar
Meeting of the Board of Governors
September 28-29, 2007
Open Session Agenda

The meeting was called to order by President Albert Menashe, Friday, September 28, 2007, at 11:00 a.m. at Salishan Resort in Gleneden Beach. The meeting adjourned at 5:17 p.m. Those present from the Board of Governors were Kathy Evans, Linda Eyeran, Marva Fabien, Ann Fisher, Gerry Gaydos, Tim Gerking, Ward Greene, Jon Hill, Robert Lehner, Albert Menashe, Carol Skerjanec, Robert Vieira, Bette Worcester, Terry Wright, and Rick Yugler. Staff members present were Karen Garst, Sylvia Stevens, Susan Grabe, Rod Wegener, Jeff Sapiro, David Johnson, Helen Hierschbiel, Danielle Edwards, and Teresa Wenzel. PLF members present were Jeff Crawford, Ron Bryant, and Tom Cave. Others present were Mary Crawford, Lauren Paulson, Heather Van Meter (via phone), Willard Chi, Dennis Karnopp, Ross Shepard, Tom Kranovich, Lisa Umscheid, William Elsinger, J.B. Kim, Manasi Kumar, Kellie Johnson, Akira Haishiki, Larry Seno, and Susan Alba.

Friday, September 28, 2007

1. Report of Officers

A. Report of the President

Mr. Menashe provided the board with a memo reflecting the events he attended and reports concerning the visits with the Chief Justice. He informed the board he met with all of the local county bars in 2007 except Lake County, which Mr. Gerking covered for him.

B. Report of the President-elect

Mr. Yugler brought the board's final 2008 meeting schedule to the board's attention. He met recently with the Court of Appeals and the Supreme Court and relayed their thanks for the BOG's support of the judiciary. He reported on his attendance at the National Conference of Bar Presidents and expressed kudos for the Cooley Law School and its focus on professionalism. The preparations for the first Past President's Council are underway.

C. Report of the Executive Director

Ms. Garst expressed her thanks for the board's support. She called the board's attention to the Judicial Proceedings Protocol, indicating it should be followed at future board meetings. A copy will be included in future board meeting packets.

D. Board Member Reports

Mr. Lehner reported that the Environmental and Natural Resource Section is interested in web casting various bar meetings. It discussed future "greenness" and would like information concerning the "greenness" of the new bar building. Ms. Garst indicated that the new bar building will be wired to accommodate webcasting, but we do not yet have all the equipment or staff expertise that is required for web casting.

Mr. Greene informed the board that Dick Roy sent him an article from the National Law Journal highlighting the Oregon State Bar as a national leader in sustainability.

Ms. Wright taped a program for Legal Links dealing with dispelling myths of the law. She encouraged other board members also to film segments. Ms. Garst indicated that the Legal Links programs are available for viewing on the bar's website.

Ms. Evans thanked Ms. Grabe for her assistance in resolving an issue without legislative action.

E. Oregon New Lawyers Division

Willard Chi presented the ONLD's report. He advised the board of events in which the group had participated including Constitution Day and Super Saturday CLE. The slate of new officers is ready for 2008. Julie Tripp interviewed Mr. Chi for an article in *The Oregonian* and he thanked the bar staff for directing Ms. Tripp to him and giving him the opportunity for the interview.

2. Professional Liability Fund

A. General Update

1. Financial Report

Mr. Cave presented the PLF's financial report. The PLF is well within budget and claims are down. Mr. Bryant presented a report on claims analysis. The PLF has hired some new staff and is looking at its current and future staff needs in light of the number of staff who will be retiring in the next five years.

2. Moving Update

The PLF will move February 2008.

3. 2008 NABRICO

The PLF will host the 2008 National Association of Bar Related Insurance Companies.

B. Approve 2008 PLF Budget

Mr. Cave explained that the proposed increase to the 2008 PLF budget is largely salaries and benefits, which will increase by 4%.

Motion: Ms. Fabien moved, Ms. Worcester seconded, and the board unanimously passed the motion to approve the 2008 PLF budget.

C. Approve 2008 PLF Primary Program Assessment

Mr. Bryant presented information concerning the PLF primary program assessment. It wants to be conservative and is working to get the reserve up to the nine million dollar level. There is a concern because claim severity is going up and next year the frequency may be higher. It would like to have a cushion and therefore would like to leave the assessment at \$3,200.

Motion: Mr. Yugler moved, Ms. Wright seconded, and the board unanimously approved the motion to retain the PLF primary program assessment at \$3,200.

D. Amend PLF Exclusion 5 Relating to the Business Covered Parties

Mr. Bryant presented information concerning the proposed amendment to PLF exclusion 5, clarifying the scope of the business activity exclusions.

Motion: Mr. Hill moved, Mr. Gerking seconded, and the board unanimously approved the motion to amend PLF exclusion 5.

E. Amend PLF Exclusion 10 Relating to Attorney Fees

Mr. Bryant presented information concerning the proposed amendment to PLF exclusion 10 to allow claims for certain attorney fee losses.

Motion: Mr. Hill moved, Mr. Gaydos seconded, and the board unanimously approved the motion to amend PLF exclusion 10.

F. Amend PLF Exclusions 2 and 4 Relating to Wrongful Conduct

Mr. Bryant presented information concerning the proposed amendment to PLF exclusions 2 and 4, which removed redundant language relating to the exclusion for wrongful conduct claims.

Motion: Mr. Vieira moved, Ms. Wright seconded, and the board unanimously approved the motion to amend PLF exclusion 2 and 4.

G. Amend PLF Exclusion 20 Relating to Contractual Obligation Exclusion

Mr. Bryant presented information concerning the amendment to PLF exclusion 20.

Motion: Mr. Hill moved, Mr. Gerking seconded, and the board unanimously approved the motion to amend PLF exclusion 20 relating to the contractual obligation exclusion.

3. Special Appearances

A. Diversity Section

1. Proposed EOB Resolution

Mary Crawford, chair of the Diversity Section, addressed the board regarding the section's resolution to retain the elimination of bias MCLE requirement. The section feels education is important and should be mandatory and ongoing. It wants the membership to understand that EOB is more than just sitting through a class. It is part of the privilege of practicing law in Oregon. Ms. Crawford expressed the section's concern and wanted the board to know how important this matter is to it. Ms. Crawford suggested that EOB be incorporated into the current courses by weaving it into the current curriculum. The board may want to consider new ways of presenting the issue and requirement to the membership.

Mr. Yugler reminded the board of the history and membership perception of the EOB. The BOG has never been against it, though the perception is it opposes the issue. The BOG fought to maintain the EOB, though the membership voted to eliminate it. The Supreme Court opposes the elimination of the EOB requirement. The requirement will be retained in some fashion, though it may not look exactly as it does today.

The board thanked Ms. Crawford for her candid input.

Ms. Stevens introduced Helen Hirschbiel, Deputy General Counsel, who will be Acting General Counsel while Ms. Stevens is on sabbatical.

4. Rules and Ethics Opinions

A. Ethics Committee

1. Proposed Formal Ethics Opinion on Trial Publicity

Ms. Stevens presented information and answered questions regarding the proposed formal ethics opinion on trial publicity.

Motion: Mr. Yugler moved, Mr. Gaydos seconded, and the board unanimously approved the motion to adopt the formal ethics opinion on trial publicity.

2. Proposed Formal Ethics Opinion on Indigent Defense Caseloads

Ms. Stevens presented information and answered questions regarding proposed formal ethics opinion on indigent defense caseloads. The committee revisited the issue in April and made no changes. She directed the board's attention to a memo from Paul Levy, which addresses the board's concerns and national criminal defense attorneys' caseloads.

Motion: Ms. Eyerman moved, Mr. Gaydos seconded, and the board approved the motion to adopt the formal ethics opinion on indigent defense caseloads (yes, 13; no, 2 [Fisher, Wright]).

B. State Professional Responsibility Board

1. Proposal for Rule Limiting the Activities Disciplined Lawyers May Perform in a Law Firm

Mr. Gerking presented the SPRB's memo requesting the BOG's guidance on whether to proceed with developing rules regulating the activities of suspended or disbarred attorneys. The board concurred with Mr. Gerking's view that the committee had additional work to do on the proposed rule before it was ready for the board's consideration. There was, however, agreement that the concept appears worth pursuing.

Motion: Ms. Wright moved, Mr. Greene seconded, and the board voted unanimously to inform the SPRB that the board invites a revised proposal on this issue.

5. OSB Committees, Sections, Councils, Divisions and Task Forces

A. MCLE Committee

1. OWLS Request for Review of MCLE Committee's

Ms. Skerjanec explained the MCLE Committee's denial of EOB credits for an OWLS CLE session entitled "Community and Volunteer Involvement." OWLS requested BOG review of the Committee's decision. Heather Van Meter appeared on behalf of OWLS. The board discussed the matter and felt it did not qualify as an EOB credit, but it might qualify for general or ethics credits.

Motion: Mr. Yugler moved, Ms. Fisher seconded, and the board passed the motion approving the CLE for 1.25 ethic credits (yes, 10; no, 5 [Eyerman, Gaydos, Menashe, Skerjanec, Wright]).

6. BOG Committees, Special Committees, Task Forces and Study Groups

A. Access to Justice Committee

1. Legal Services Program Committee Recommendation to Increase Administrative Filing Fee

Ms. Eyerman presented the committee's motion to increase the filing fee administrative allocation from \$90,000, which it has been for the last ten years, to \$108,000.

Motion: The board unanimously passed the committee motion to increase administrative allocation from \$90,000 to \$108,000.

2. LSPC Recommendation to Increase General Fund Appropriation for Legal Aid for 2007-2009

Ms. Eyerman presented the committee's motion that the 2007-09 General Fund appropriation to the OSB be held in the Legal Services Program to be distributed in accordance with existing policies; that all interest on the funds be accumulated for the LSP pending a further recommendation; and that a small portion of the funds be used over the next six months to increase the funding to Jackson and Lane County programs.

Motion: The board unanimously passed the committee's motion.

B. Budget and Finance Committee

1. New Bar Center

Mr. Greene reported on developments regarding the new bar center. Though much progress has been made, there are no tenants yet for the master lease space. Although the final cost of the new building is more than the contracted price, it is within the bar's anticipated expenditure and is very manageable. Mr. Greene will keep the board informed of construction progress as additional information comes available. Mr. Wegener reviewed the costs and loan estimates and answered questions from the board.

C. Policy and Governance Committee

1. Change in Alcohol Policy

Motion: Mr. Gerking moved, Mr. Greene seconded, and the board unanimously passed the motion to table the committee motion.

2. Reciprocity with Alaska

Mr. Gerking presented the committee's motion to ask the BBX to study possible reciprocity with Alaska, notwithstanding the slight differences in the two state's rules. The Alaska Bar has indicated it is willing to work out the differences if that would bring about reciprocity.

Motion: The board unanimously passed the committee motion to forward a request to the BBX to study the possibility of expanding the bar's admission's reciprocity to include Alaska.

D. Public Affairs Committee

1. Political Update

Ms. Grabe updated the board on issues concerning the legislature. The new election cycle will bring many changes. There are three lawyers running for office and they are familiar with the bar and its legislative process. Ms. Grabe reiterated the importance of having lawyers in the legislature supporting the bar and its policies. At this time, PAC does not anticipate introducing anything to the special February session. At the same time, it may be involved in issues being introduced.

2. Pending Initiatives

Mr. Yugler presented information concerning a proposed BOG resolution for the HOD agenda establishing that the bar will oppose legislative initiatives 2, 51, and 53 should they be included on the Oregon state ballot.

Motion: The board unanimously passed the committee motion to approve the HOD resolution in opposition to ballot measures 2, 51, and 53.

E. Public Member Selection Committee

1. Board of Governors Public Member Recommendation

Ms. Worcester informed the board of the committee's recommendation to select Audrey Matsumonji as the new public member for the board. She was one of three finalists and the committee's first choice.

Motion: The board unanimously passed the committee motion to ask Ms. Matsumonji to accept appointment as the new public member to the Board of Governors.

7. HOD Agenda

The board reviewed the HOD agenda and decided which resolutions to support and who would present information to the HOD.

1. 2008 Membership Fee

Mr. Greene to present the BOG resolution concerning the 2008 membership fees to the HOD.

2. Mileage Reimbursement for HOD Members

Mr. Yugler will present the BOG resolution concerning mileage reimbursement for HOD members to the HOD.

3. Amend ORS 12.020(1)

Motion: The Public Affairs Committee moved to oppose the resolution based on the of lack of research and on concerns that the matter is procedural and not an issue for the HOD. The committee motion passed unanimously.

4. In Memoriam

Ms. Fabien will read the names of lawyers who died since the last meeting of the HOD.

5. Record of Proceedings

Mr. Gerking will present the BOG resolution concerning video recording of the HOD proceedings. The board discussed the value of visual historical record and the concerns of the court reporters that there will no longer be a written transcript. Ms. Garst pointed out that the 2007 HOD meeting would be video recorded and stenographically reported.

6. Support Adequate Funding for Legal Services.

Motion: Ms. Eyerman moved, Mr. Greene seconded, and the board voted unanimously to support adequate funding for legal services of low-income Oregonians. Ms. Eyerman agreed to present the board's support to the HOD.

7. Continue the Current Policy Prohibiting the Use of Bar Funds for the Purchase of Alcoholic Beverages

Although the Policy and Governance Committee recommends a change in the current policy, Mr. Gerking reported that the committee would defer bringing the recommendation to the BOG until after the HOD meeting.

Motion: Mr. Wright moved, Ms. Skerjanec seconded, and the board passed the motion to take no position on the issue of the purchase of alcoholic beverages with bar funds (yes, 12; no, 3 [Fisher, Menashe, Yugler]).

8. Restore Decision to Ban Military Advertisement in OSB Publications

The board discussed concerns about returning this excluded resolution to the HOD agenda. The board agrees with General Counsel's view that the vote of the membership supersedes the vote of the HOD. It reviewed the procedure of adding the resolution to the HOD agenda; Ms. Stevens agreed to present the legal aspects of the resolution if the HOD voted to suspend the rules.

Motion: Ms. Fisher moved, Ms. Wright seconded, and the board unanimously passed a motion to hear from Mary Crawford, Chair of the Diversity Section.

Mary Crawford, Chair of the Diversity Section, presented the section's concerns regarding the proposed HOD resolution concerning military ads in OSB publications. The section does not support the current bar policy, nor does it support the proposed resolution that appears in the HOD agenda. Rather, it would support an alternate resolution drafted by Robert Joondeph, which would require a disclaimer on pages soliciting employment that "The Oregon State Bar does not discriminate on the basis of race, religion, color, gender, sexual orientation, geographic location, age, disability, marital, parental or military status and does not endorse or condone such discrimination by any advertiser."

Motion: Ms. Wright moved, Mr. Gaydos seconded, and the board unanimously passed a motion to support the Joondeph resolution should it get to the HOD agenda.

8. Consent Agenda

Motion: Ms. Wright moved, Mr. Lehner seconded, and the board unanimously approved the motion to approve the Consent Agenda as presented.

9. Special Appearance

A. Oregon Minority Lawyers Association

Mr. Menashe opened the session by assuring everyone of the board's continuing and unwavering commitment to the Affirmative Action Program. He also pointed out the BOG's responsibility to members to assure that all OSB programs are properly accountable and administratively sound.

The following individuals spoke to the board: Dennis Karnopp, Lisa Umscheid, Tom Kranovich, William Elsinger, J.B. Kim, Manasi Kumar, Kellie Johnson, Akira Haishiki, Larry Seno, Susan Alba.

The various speakers acknowledged their respect for the Executive Director and her commitment to the Affirmative Action Program. Nevertheless, there is concern that AAP

changes were made without consultation with the Affirmative Action Committee (AAC) or other stakeholders. There is also concern about how the AAP will function as part of the Member Services Department. One speaker explained that the reaction to AAP changes was exacerbated by three recent issues which have given the minority community reason to be concerned about the level of support for diversity in the bar as a whole – fighting for reauthorization of the AAP, the decision to allow military ads in bar publications, and the effort to get rid of EOB education.

Mr. Yugler closed the session by acknowledging that the AAP has touched many students and lawyers, that the bar's support of the AAP is unwavering and it wants students to thrive. The BOG's objective is to ensure success of the AAP and it is focused on doing just that. Ms. Fabien informed the group that Ms. Garst had spoken to her about the changes before they occurred. She asked the group if it had specific requests for the board to prove its commitment to the program and if so, to let board members know.

10. Closed Session Agenda

- A. Reinstatements (Judicial proceeding pursuant o ORS 192.690(1) – separate packet)
- B. General Counsel/UPL Report (Executive Session pursuant to ORS 192.660(1)(f) and (h) - separate packet)

11. Good of the Order (Non-action comments, information and notice of need for possible future board action)

- A. Renewal of RPC 5.5

Ms. Stevens reported that the Supreme Court voted on September 25 to permanently renew RPC 5.5 (temporary practice by out of state lawyers), which was set to expire on December 31, 2007.

- B. Advertising Task Force

Ms. Stevens relayed the Supreme Court's recommendation that the BOG create a task force to study Oregon's advertising rules to ensure they are consistent with state and federal constitutional standards. There being no disagreement from the board, Mr. Menashe instructed Ms. Stevens to work with him to designate individuals to participate. Mr. Greene volunteered to be the BOG representative on the Advertising Task Force.

Motion: Ms. Wright moved, Mr. Lehner seconded, and the board unanimously passed a motion to create an advertising task force.